IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 3636 OF 2007

Laxman Tukaram Gaikwad.... Petitioner

versus

Pralhad Tukaram Gaikwad..... Respondent.

Mr. Girish Godbole i/b. S.S.Jingwate for the petitioner.
Shri Dilip Bodke for the respondent.

CORAM; A.P. DESHPANDE, J.
DATED; 21ST SEPTEMBER, 2007

P.C.;

1. The petitioner is the plaintiff whereas the respondent is the defendant. They are real brothers. The present petitioner filed a suit for perpetual injunction and in the suit an application for temporary injunction also came to be filed. The trial court allowed the temporary injunction application and restrained the respondent from carrying out the construction. Aggreived thereby the respondent herein carried an appeal before the District Judge and the District Judge by its order dated 30-3-2007 disposed of the appeal by directing the defendant to file an undertaking that in the event of passing of a decree in the suit, in favour of the plaintiff, the defendant will remove the structure and hand over vacant

possession to the plaintiff. The defendant has filed an under taking as directed by the First Appellate Court. In ivew of the filing of the undertaking and the work being in progress, the costruction of the house is comnplete as of today and there remains nothing to be restrained. The petition has virtually become infructuous.

2. At this stage the learned counsel for the petitioner submits that the defendant should not carry out any further construction. The house as it exists today is only of ground floor and the learned counsel for the respondent/defendant submits that the defendant will not carry out any constrcution on the first floor. The trial court shall proceed to decide the suit on its merit uninfluenced by the observation made by the trial court so also the First Appellat Court in regard to the decision of the temporary injunction application. I hope and trust that having regard to the nature of the dispute, the trial court shall endeavour to decide the suit as expeditiously as possible.

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